

HOW TO APPEAL YOUR CIVIL CASE<sup>1</sup>

**FILING YOUR NOTICE OF APPEAL.**

Appeal From a District Court. The Notice of Appeal must be filed in the district court within 30 days from the entry of the order or judgment of the district court which you are appealing. If the U.S. government is a party, the Notice of Appeal must be filed within 60 days of entry of the order or judgment you are appealing. If a timely Notice of Appeal has been filed by one party in a case, any other party may file a Notice of Appeal within 14 days after the first Notice of Appeal is filed, or within the time previously stated, whichever is later.

Appeal From the Tax Court or Petition for Review of an Order of a U.S. Government Agency. If you are appealing a decision of the U.S. Tax Court or seeking review of, or to enforce an order of, a U.S. agency, follow the applicable statute governing the time for filing the Notice of Appeal or Petition for Review.

Appeal From the Bankruptcy Appellate Panel [BAP]. The Notice of Appeal must be filed in the BAP Court within 30 days from the entry of the order or judgment of the Bankruptcy Appellate Panel which you are appealing. If the U.S. government is a party, the Notice of Appeal must be filed within 60 days of entry of the order or judgment you are appealing. If a timely Notice of Appeal has been filed by one party in a case, any other party may file a Notice of Appeal within 14 days after the first Notice of Appeal is filed, or within the time previously stated, whichever is later.

**NOTE THAT ALL PERSONS AND ENTITIES THAT WISH TO BE APPELLANTS SHOULD BE NAMED IN THE NOTICE OF APPEAL.**

**PAYING YOUR DOCKET FEE.**

Appeal From a District Court. Pay the \$100 docket fee, plus \$5.00 processing fee, to the Clerk of the district court when you file the Notice of Appeal.

Appeal From the Tax Court or Petition for Review of an Order of a U.S. Government Agency. Pay the \$100 docket fee in the U.S. Tax Court, if you are appealing from an order of that court. If you are seeking review of an order of any other U.S. agency, the docket fee of \$100 is paid in the Court of Appeals.

Appeal From the BAP Court. Although the notice of appeal is filed in the BAP Court, you must pay the \$100 docket fee, plus \$5.00 processing fee, to the Clerk of the Court of Appeals for the Second Circuit.

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<sup>1</sup>These instructions are only a summary of the Court of Appeals procedures. Please refer to the Federal Rules of Appellate Procedure, as supplemented by the Local Rules of this Court, for answers to specific questions.

**If you do not pay the fee within ten days of filing the Notice of Appeal, your case may be dismissed by the Court of Appeals.** If the appellant cannot afford to pay the fee, you must file a motion for "in forma pauperis" status (as a poor person) in the district court (or in this Court in an agency appeal). If this is denied, the motion may be filed in the Court of Appeals. The motion to this Court must be on the Court's motion form (see **Motions**, below), and have a proper financial affidavit attached. *If you intend to move for in forma pauperis status, you must do so within ten days of filing the Notice of Appeal or within ten days notify the Court that you will make a motion for in forma pauperis status within 30 days of filing the Notice of Appeal.*

## **ADMISSION TO PRACTICE BEFORE THE SECOND CIRCUIT**

Counsel of record and counsel who will argue the appeal must be admitted to the bar of this Court. For forms and information on admission to practice before this Court, contact the Court's Admissions Clerk at (212)857-8603.

## **FILING PRE-ARGUMENT FORMS (Forms C or C-A, and D).**

Form C or C-A. Within 10 days after filing your Notice of Appeal, or your Petition for Review or Application for Enforcement, file an original and one copy of Form C (for an appeal from the district court, the Tax Court or the BAP Court) or Form C-A (for an appeal from an agency) with the Clerk of the Court of Appeals and serve it on your adversary. The form cannot be mailed to the Court on the 10th day. It must be received in the Court of Appeals by the 10th day (See F.R.A.P. 26(a)). It is strongly recommended that you serve and file Form C or C-A at the same time you file your Notice of Appeal. These instructions also apply to cross-appeals.

*The requirement for filing the pre-argument statements (forms C or C-A and D) is waived in pro se cases. For the purpose of Court of Appeals procedures, pro se's are those parties who are proceeding without benefit of an attorney. An attorney or law school graduate (including a disbarred or suspended attorney) who is proceeding on his or her own behalf is not considered pro se for these purposes and must fully comply with the rules.*

Every question on Forms C and C-A should be answered, particularly where a narrative is requested. The name(s) of the appellant(s) and the complete name, address, and phone number of attorneys for each party must be provided. You should append to Form C as many additional pages as are necessary to fully complete the information requested.

Form D. (Appeals from the district court only.) Within 10 days after filing your Notice of Appeal in the district court, file one copy of Form D (transcript information) with the Clerk of the Court of Appeals, furnish two copies to the court reporter, and send one copy to counsel for the appellee(s).

Arrange for the transcription of the stenographic record of the trial at the earliest possible moment, and clearly indicate on Form D what portions of the trial record are being ordered.

In the rare circumstances in which transcripts are not being ordered or are not required, **counsel must nonetheless file Form D and note thereon the status of transcripts and reasons, if any, for not ordering transcripts.**

## **PROVIDING COPIES OF JUDGMENTS, ORDERS, AND/OR DECISIONS**

At the time you file Form C or C-A, you must provide the Court of Appeals with:

- A copy of each judgment, order, and/or decision of the district or BAP court, or agency from which you seek review.
- A copy of each written or transcribed oral opinion rendered in the proceeding from which you seek review which addresses the issues on appeal.
- In cases which have first been appealed to the district court (e.g., bankruptcy cases), a copy of all judgments, decisions, orders and opinions reviewed by the district court which address the issues on appeal.

***FAILURE TO FULLY COMPLY WITH THE ABOVE PROCEDURES WILL RESULT IN UNNECESSARY DELAYS AND MAY RESULT IN THE DISMISSAL OF THE APPEAL WITHOUT FURTHER NOTICE OF THE COURT.***

## **SCHEDULING ORDER**

After you have filed the Notice of Appeal and Pre-Argument Statement Forms, the Court will issue a *Scheduling Order*. The Scheduling Order will tell you when to file the record on appeal (see definition below), and when to file the brief and appendix. It will also set forth when the appellee's brief is due, and the earliest date on which the case may be scheduled for argument before the Court of Appeals. **This scheduling order will not necessarily conform with the times set forth in the Federal Rules of Appellate Procedure (F.R.A.P.), Rules 17 and 31.** *See the Court's Civil Appeals Management Plan, Appendix C to the Local Rules.*

## **PRE-ARGUMENT CONFERENCE**

In counselled cases (cases in which both parties are represented by attorneys, or where an attorney or law school graduate is proceeding pro se), a pre-argument conference may be scheduled with Staff Counsel of the Court of Appeals. The purpose of the conference is to consider the possibilities of settlement, to simplify the issues, to resolve procedural problems, or to discuss any matters which may aid in the expeditious disposition of the case.

*Attorneys are advised to consult the Civil Appeals Management Plan of the Second Circuit for a detailed and comprehensive explanation of the guidelines for the conduct of a pre-argument conference.*

*F.R.A.P. Rule 33 provides, among other things, that "Before a settlement conference, attorneys must consult with their clients and obtain as much authority as feasible to settle the case."*

## **FILING THE RECORD, BRIEFS, AND APPENDIX**

### **1. THE RECORD.**

The Scheduling Order will generally provide that the record on appeal be filed no later than 20 days after filing the Notice of Appeal. (The record on appeal consists of all of the documents of the lower court or agency, including transcripts.) However, in some cases the period may be shorter. If at the time the record is due the transcript is still incomplete, a partial record must be timely filed and supplemented later when the transcript is complete. The attorney for the appellant is responsible for preparing an index to the record and filing it in the district court. The district court will forward the record to the Court of Appeals in accordance with the Court's procedures. Generally, the Court will request that only the index be filed with the Court and the record be retained in the district court until needed, but this does not relieve the attorney of the requirement to timely prepare the record for transmittal. Receipt from the district court of a certified copy of the index will satisfy the requirement to file the record.

*In pro se cases, the district court will prepare and forward the record.*

***The Court will not ordinarily grant motions to extend time to file the record.***

### **2. BRIEF AND APPENDIX.**

The Scheduling Order will generally provide for the appellant's brief and appendix to be served and filed not later than 30 days after the date on which the record on appeal is due. Frequently, this time will be shortened when the scheduling order gives a longer period of time to file the record. The appellee's brief is generally scheduled to be filed 30 days after the appellant's brief is due. If a reply brief is filed (optional), it must be served and filed within 14 days after service of the appellee's brief, but not less than 3 days before argument.

**The brief** sets forth the legal argument of the case, and must comply with several rules set forth in F.R.A.P. Attorneys should familiarize themselves fully with these rules. Pursuant to Fed. R. App. P., Rule 32, effective December 1, 1998, a principal (appellant or appellee) brief may not exceed 30 pages, and must not exceed 14,000 words, or if monospaced typeface is used either 14,000 words or 1300 lines. The number of words or lines must be certified by the attorney or unrepresented party in a certificate of compliance. A reply brief of over 15 pages is limited to half of the type-volume permitted in the principal brief. Headings, footnotes and quotations count toward word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of compliance do not count toward type-volume limitation.

**Motions for leave to file oversized briefs, to postpone the date on which briefs are required to be filed, or to alter the date on which argument is to be heard, must be made two weeks or more before the brief is due.** (Second Circuit Local Rule 27 (g)). Briefs must be legible. Proportionally spaced typeface must be 14-point or larger; monospaced typeface may not contain more than 10-1/2 characters per inch. [See F.R.A.P. 32.]

Briefs in pamphlet size will be accepted in the Second Circuit. Text and footnotes must be in 11-point or larger type, with 2-point or more leading between the lines (printers should be familiar with these standards). Sans serif type and compacted or other compressed printing is prohibited. ***These briefs must be bound in volumes having pages 6-1/8 x 9-1/4 inches, containing no more than 14,000 words in compliance with Fed. R. App. R. 32. A certificate of compliance must be included, unless the brief has 30 pages or less.***

***The appellant's brief must also contain: (see F.R.A.P. 28)***

- A table of contents, with page references
- A table of cases (alphabetically arranged), statutes and other authorities cited, with references to pages in the brief
- A preliminary statement of the name of the judge or agency member who rendered the decision and a citation of the reported opinion, if any (See Local Rule 28.)
- A statement of subject matter and appellate jurisdiction
- A statement of the issues presented
- A statement of the case
- An summary of the argument
- An argument
- A short conclusion stating the precise relief sought
- Proof of service
- Any brief over 30 pages (Reply briefs over 15 pages) must contain a Certificate of Compliance pursuant to F.R.A.P. 32 bound in the very front of the brief.

***The appendix*** should contain those matters from the record on appeal which are cited in the briefs or required by the Court to be included, such as the relevant docket entries in the proceedings below; any relevant portions of the pleadings, charge, findings, or opinion; the judgment, order, or decision appealed from; and any other parts of the record to which the parties wish to direct the particular attention of the Court. F.R.A.P. Rule 30(a) outlines all the requirements for the contents. Nothing should be contained in the appendix which is not in the record on appeal. Also, the parties need to keep in mind that the entire record is available to the Court if needed, so reproduction of only those parts of the record necessary to illustrate the legal argument should be included in the appendix. The fact that parts of the record are not included in the appendix will not prevent the parties or the Court from relying on such parts.

### Brief Cover Colors

Appellant	- Blue	Reply	- Gray
Appellee	- Red	Intervenor or Amicus Curiae	- Green
Appendix	- White		

***Brief captions.*** The caption on the covers of the briefs and appendices must conform to this Court's "official caption". If this Court's official caption is erroneous, it is the obligation of counsel to bring this to the attention of the Court promptly, but in no event later than seven days prior to the due date for the appellant's brief.

### **STRIKING BRIEFS OR OTHER DOCUMENTS NOT IN PROPER FORM.**

Briefs or other legal documents (motions, memoranda of law, etc.) which do NOT comply in form with the FRAP or Local Rules will be filed as "defective documents," and notice will be given to correct the form. (The most common defect is the lack of proof of service.) If the correction is timely made, the brief or other document will be considered timely if the original was timely filed. If the correction is not timely made, an order will be entered striking the brief or other document. A motion must then be made to file the corrected document out of time.

### **3. ORAL ARGUMENT.**

**YOUR NOTICE OF APPEARANCE MUST BE FILED WHEN THE APPELLANT'S BRIEF IS DUE.** Failure to submit the form on time will be taken into consideration by the Court in deciding any motions you may make for adjournment. In the notice of appearance form, counsel must set forth dates of unavailability for oral argument. **THEREAFTER, COUNSEL MUST ADVISE THE COURT PROMPTLY OF ANY CHANGE IN AVAILABILITY.**

The Scheduling Order provides that the appeal shall be ready for argument during a specified week; this is subject to change, but will not be earlier, unless a subsequent order expediting the appeal is entered. There is no guarantee that the appeal will be heard on or near this date. The fact that this date appears in the scheduling order does not mean that the case has been set for argument on that date.

***Calendaring your case:*** The attorney or pro se party will ordinarily be notified of a "firm date for argument" at least three weeks in advance of the date on which the case is calendared to be heard. The Clerk's office sends these notices no later than the day after the presiding judge approves the calendar. On occasion, the time may be shorter than three weeks if, for example, the appeal has been expedited and an expedited scheduling order has issued.

**ONCE A CASE HAS BEEN ASSIGNED A “SET” DATE FOR ORAL ARGUMENT, ADJOURNMENTS ARE RARELY GRANTED.** In preparing the calendar, the Court has already taken into account the dates the attorney or pro se party has indicated that he or she is unavailable. Once the case is on a “set” calendar, work has already been begun on the case in the chambers of all three judges. The Court is naturally reluctant to pass the case to three other judges who must duplicate the work already done, and to inconvenience other parties by substituting a different case at the last moment on short notice. The inconvenience of one party who has failed to notify the Court in advance of unavailability is outbalanced by the inconvenience and extra work placed not only on the judges who have already begun work on the case, and their law clerks, and clerk’s office staff, but also to other parties who have complied with the Court’s requirements and must be substituted at the last moment. Obviously, a genuine emergency such as an unexpected hospitalization of counsel will be considered seriously by the Court. Even in such cases, however, the Court may decide the case on submission of the briefs only if it is determined by the panel that oral argument is not necessary to disposition.

Appeals are heard by a three-judge panel of the Court. The names of the judges are not made public until noon on Thursday of the week before the panel sits. With rare exceptions, Court sits every weekday, except holidays and except during July and August, when the Court sits only one or two weeks each month. The Court also is generally, but not always, adjourned during the last week or two of December. Oral arguments are heard starting at 10:00 a.m. and continue until completion, some time between noon and 1:00 p.m. Arguments are generally limited to ten minutes or less per side, except in complex or multi-party cases. The Court hears arguments in the 17<sup>th</sup> Floor Courtroom, entrance through room 1705, at 40 Foley Square, New York City. Several times a year two panels sit simultaneously; the place of sitting for the second panel will be contained in the firm date notice.

## **EXHIBITS**

Rule §11 of the Local Rules covers the filing of exhibits in the Court of Appeals, and counsel must comply with this rule. The Clerk of the district court must transmit the exhibits to the Court of Appeals after certifying them as part of the record. Tender of loose copies of exhibits will be refused.

## **SEALING DOCUMENTS**

On rare occasions, documents will be placed "under seal" so that they are not available for public view. Any papers which have been sealed in the district court will remain under seal in the Court of Appeals if received as part of the record. If the district court has not sealed documents, they will not be sealed in the Court of Appeals without a court order.

A party wishing to file papers under seal with the Court of Appeals must make a formal motion requesting that the papers submitted be placed under seal. *Informal requests to seal documents will not be entertained. All papers submitted to the Court pursuant to a sealing order must be submitted in a sealed envelope, marked **SEALED**, with a copy of the order placing the documents under seal annexed thereto.*

## MOTIONS

All requests to the Court (*for example, extensions of time to file the brief*), must be made in the form of a **MOTION**. The Court requests that motions be accompanied by a Motion Form, T-1080. The motion must be accompanied by an affidavit attorney's affirmation (*containing factual information only*). The moving party must indicate on either the T-1080 form or on the face page of the motion papers whether consent for the relief requested has been sought or obtained, and whether oral argument on the motion is desired. If the moving party seeks substantive relief from a lower court opinion or agency decision, a copy of the opinion or decision must be attached as a separately identified exhibit. An original plus four (total five) copies of all motions must be submitted, accompanied by proof of service on all other parties to the action. (Counsel is expected to be familiar with Local Rule 27 governing motions to this Court.)

***Substantive motions*** requiring oral argument are heard on Tuesdays when the Court is in session, as scheduled by the Court. The motion and all supporting papers must be filed not later than the Monday of the week preceding the date when hearing is desired (8 days in advance of the date it is requested to be heard). If the adverse party is served in person, such service must be made by the Thursday preceding the required filing date (12 days in advance of the date it is requested to be heard). If service is by mail, the motion must be mailed by the Monday preceding the required filing date (15 days in advance of the date requested to be heard). Any papers in response from the adverse party must be served and filed within seven days of personal service or ten days of service by mail of the original motion, but in any event not later than noon on the Thursday of the week prior to the Tuesday for which the motion is noticed (5 days in advance of the date requested to be heard). If at all possible, responsive papers should be filed earlier than the Thursday noon deadline so as to allow adequate time for review by the Court. The original and at least four copies (total, five) must be submitted for filing. *It should be noted that the date for hearing will be scheduled by the Court, and may not be scheduled on the date requested, but on a date more convenient for the business of the Court. Any motion which is a genuine emergency should be so labeled.*

***Procedural motions*** (for example, an extension of time to file a brief, or permission to file an oversized brief), will not be placed on a motions calendar and need not be noticed for a particular date. Because responsive papers are normally not filed in opposition to procedural motions, the Court does not wait for such papers. If you choose to respond, therefore, you should respond promptly. By standing order of the Court, certain procedural motions are determined by the Clerk or a staff attorney or staff counsel or deputy clerk acting under the Clerk's authority. Other procedural motions are referred to the weekly applications judge.

Once a case is assigned a date for oral argument, all motions, including procedural motions, will be referred to the panel that will hear the appeal. To maintain the anonymity of the panel, however, any motions decided by the panel will be signed by the Clerk or a deputy clerk, without indication of the names of the panel.



**ALL ORDERS OF THIS COURT, AS WITH ALL FEDERAL COURTS OF APPEAL, ARE SIGNED BY THE CLERK OR CLERK’S REPRESENTATIVE “FOR THE COURT.”**

Except for orders on those procedural motions delegated to the Clerk for determination (which may be appealed to a Judge), these orders have been decided by a judge or panel of judges, who then direct the Clerk to sign on behalf of the Court.

**PROOF OF SERVICE**

Papers filed in the Court of Appeals must be served on (delivered to) the other parties in the case. All such papers presented for filing in the Court of Appeals (briefs, motions, etc.), must contain a signed acknowledgment of service by the person(s) served, or proof of service in the form of a sworn statement of the date and manner of service and the names of the person(s) served and the address to which it was served. This statement must be certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. Service may be made by mail.

**PETITION FOR REHEARING**

After a final order or judgment of the Court of Appeals, parties who wish to apply for a rehearing must file a petition for panel rehearing and/or a petition for rehearing en banc within 14 days after entry of judgment, or, if the United States or an agency or officer thereof is a party, the petition must be filed within 45 days after entry of judgment. The timely filing of a petition for panel or en banc rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after the entry of the order denying the petition, unless the time is shortened or enlarged by order.

**ISSUANCE OF MANDATE**

The mandate terminates the Court of Appeals' jurisdiction over a case and, when there is a remand, transfers jurisdiction back to the originating court. The mandate will issue 7 days after the expiration of time for filing a petition for rehearing unless such petition is filed or the time is shortened or enlarged by order. The timely filing of a petition for panel or en banc rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. Appeals which are terminated on motions are ordinarily mandated forthwith. The physical mandate is a copy of the order or judgment which terminates the case, with the words “Issued as Mandate” thereon. (There is no separate document.) *Copies of the mandate can be obtained only from the originating court, to whom the original has been sent.*

## PETITION FOR WRIT OF CERTIORARI TO THE U.S. SUPREME COURT

A party seeking review of a Court of Appeals order by the U.S. Supreme Court has 90 days from the date of the entry of judgment, or if a petition for rehearing was timely filed, from the denial of the petition for rehearing, to file a petition for writ of certiorari with the U.S. Supreme Court. A stay of the mandate, pending application to the Supreme Court for a writ of certiorari, may be granted if a motion is made to the Court of Appeals with reasonable notice to all the parties. *The U.S. Supreme Court grants only about 110 writs of certiorari per year from the entire country, an average of between 7 and 14 from this Court.*

## APPEALS CLERKS IN THE DISTRICT COURTS

An Appeals Clerk has been appointed in each District Court Clerk's office to assist anyone who may have questions in connections with the filing of papers to perfect an appeal. These clerks can be contacted at the following numbers/locations:

Connecticut	Bridgeport, CT	(203) 579-5863
	Hartford, CT	(860) 240-3200
	New Haven, CT	(203) 773-2140
Northern District	Albany, New York	(518) 431-0279
	Binghamton, New York	(607) 773-2893
	Utica, New York	(315) 793-8152
	Syracuse, New York	(315) 448-0507
Eastern District	Brooklyn, New York	(718) 260-2310
	Uniondale, New York	(516) 485-6500
	Hauppauge, New York	(516) 582-1100
Southern District	New York, New York	(212) 805-0636
	White Plains, New York	(914) 390-4002
Western District	Buffalo, New York	(716) 551-4211
	Rochester, New York	(716) 263-6263
Vermont	Burlington, VT	(802) 951-6394
BAP	New York, New York	(212) 668-2320

If you have any questions regarding appellate procedure in the Second Circuit, please contact this office or the Appeals Clerk in the appropriate District Court. If you have a case before this Court, you should speak with your Case Manager. Set forth below are the primary telephone numbers for Second Circuit Appeals Management Teams.

Civil Appeals	857-8576	Criminal Appeals	857-8515	Prisoner Appeals	857-8551
Pro Se Appeals	857-8550	Agency Appeals	857-8544	Intake	857-8500
		Prisoner Civ. Rights	" "		

# United States Court of Appeals

FOR THE  
SECOND CIRCUIT

## NOTICE OF APPEARANCE INFORMATION AND FORM

The form on the reverse side containing appearance, time request, availability, and related case information must be completed by all parties and returned to this office when appellant's brief is due.

**FAILURE TO SUBMIT THIS FORM ON TIME WILL BE CONSIDERED  
BY THE COURT IN DECIDING ANY MOTIONS FOR ADJOURNMENT  
BASED ON UNAVAILABILITY.**

Each counsel of record or individual appearing pro se must complete this form. If an attorney other than counsel of record will argue the appeal, counsel of record must provide that attorney's name and date of admission to the bar of this Court in the space provided and indicate the dates, if any, when that attorney will be unavailable to argue the appeal.

Counsel of record and counsel who will argue the appeal must be admitted to the bar of this Court or be otherwise eligible to argue an appeal. The Court encourages and prefers written pro hac vice motions, filed as early as possible. Admission pro hac vice will be extended as a matter of course to a member of the bar of a district court within the circuit who has represented a criminal defendant at trial and continues representation on an appeal taken pursuant to the Criminal Justice Act. See Local Rule 46. However, counsel are encouraged to apply for general admission to this Court as soon as they meet the qualifications.

For information concerning admissions and admission applications, contact the Clerk's office at (212) 857-8603.

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**NOTICE OF APPEARANCE**

Appearance for (provide name of party): \_\_\_\_\_

**Status of Party:**

- |   |  |
|---|--|
| <input type="checkbox"/> Appellant/Petitioner             | <input type="checkbox"/> Cross-Appellee/Cross Respondent |
| <input type="checkbox"/> Appellee/Respondent              | <input type="checkbox"/> Intervenor                      |
| <input type="checkbox"/> Cross-Appellant/Cross-Petitioner | <input type="checkbox"/> Amicus Curiae                   |
| <input type="checkbox"/> Other (Specify): _____           |  |

- ☐ An attorney will argue this appeal.

P Name of attorney who will argue appeal, if other than counsel of record: \_\_\_\_\_

P Date of arguing attorney's admission to this Court (month, day, year): \_\_\_\_\_

P Other Federal/State Bar admissions: (month, day, year): \_\_\_\_\_

- ☐ I am a pro se litigant who is not an attorney.

- ☐ I am an incarcerated pro se litigant.

**TIME REQUEST**

- ☐ Oral argument is not desired.
- ☐ Oral argument is desired. Party requests \_\_\_\_\_ minutes or multi-co-parties request a total of \_\_\_\_\_ minutes to be apportioned as follows:

If more than 20 minutes per side is requested, set forth reasons:

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**AVAILABILITY OF COUNSEL/PRO SE LITIGANT**

I understand that the person who will argue the appeal must be ready at any time during or after the week of argument which appears on the scheduling order.

- ☐ I know of no dates which would be inconvenient.
- ☐ I request that the argument of this appeal not be calendared for the following dates, which are inconvenient. I have included religious holidays.
- \_\_\_\_\_

**COUNSEL OR PRO SE LITIGANT MUST ADVISE THE COURT IN WRITING OF ANY CHANGE IN AVAILABILITY. FAILURE TO DO SO MAY BE CONSIDERED BY THE COURT IN DECIDING MOTIONS FOR ADJOURNMENT BASED ON UNAVAILABILITY.**

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**RELATED CASES**

- ☐ This case has not been before this Court previously.
- ☐ This case has been before this Court previously. The short title, docket number and citation are: \_\_\_\_\_
- ☐ Matters related to this appeal or involving the same issue have been or presently are before this Court. The short titles, docket numbers and citations are: \_\_\_\_\_

Signature of counsel of record or pro se litigant:

Signature of counsel who will argue  
the appeal, if different:

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

Name of Firm:

Address:

Telephone: (     )     -     Date:

Telephone: (     )     -     Date:

United States Court of Appeals  
for the Second Circuit

## NOTICE

Court personnel are not permitted to give you legal advice.

Employees of the Court can help you with procedural questions, such as:

What is the status of my motion?

or

How many copies of my brief must I file?

Staff members are not available to review your case with you, or to explain what an order of the Court means. We will try to direct you to the appropriate Rules, but you must decide how to proceed.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT  
CIVIL APPEAL PRE-ARGUMENT STATEMENT

1. SEE NOTICE ON REVERSE.    2. PLEASE TYPE OR PRINT.    3. ATTACH ADDITIONAL PAGES IF NECESSARY.

Title of Case:		District or Agency		Judge
		Date Filed in District Court or Agency	District Court Docket No.	
		Date Notice of Appeal Filed	Is this a Cross Appeal? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Attorney(s) for		Name	Address	Telephone
Appellant <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant				
Appellee <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant				
Has Transcript Been Prepared?	Approx. Number of Transcript Pages	Number of Exhibits	Has this matter been before this Court previously? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, state Case Name: Docket No.:  Citation:	
BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:				
ISSUES PROPOSED TO BE RAISED ON APPEAL:				
A. JURISDICTION				
1. <u>Federal</u>  <input type="checkbox"/> U.S. a party <input type="checkbox"/> Diversity <input type="checkbox"/> Federal question (U.S. not a party) <input type="checkbox"/> Other (specify): _____			2. <u>Appellate</u>  <input type="checkbox"/> Final Decision below <input type="checkbox"/> Order Certified by District Judge <input type="checkbox"/> Interlocutory decision (specify): _____ appealable as of right <input type="checkbox"/> Other (specify): _____	

**IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.**

B. DISTRICT COURT DISPOSITION (Check as many as apply)			
1. Stage of Proceedings	2. Type of Judgment/Order Appealed	3. Relief	
<input type="checkbox"/> Pre-trial <input type="checkbox"/> During trial <input type="checkbox"/> After trial	<input type="checkbox"/> Default judgment <input type="checkbox"/> Dismissal/jurisdiction <input type="checkbox"/> Dismissal/merit <input type="checkbox"/> Summary judgment <input type="checkbox"/> Declaratory judgment	<input type="checkbox"/> Judgment / court decision <input type="checkbox"/> Jury verdict <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Directed verdict <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Damages: ___ Sought: \$ _____ ___ Granted: _____ ___ Denied: \$ _____  <input type="checkbox"/> Injunctions: ___ Preliminary ___ Permanent ___ Granted ___ Denied

  

C. NATURE OF SUIT (Check as many as apply)			
<b>1. Federal Statutes</b> <input type="checkbox"/> Antitrust <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Banks/Banking <input type="checkbox"/> Civil Rights <input type="checkbox"/> Commerce, routes and tariffs <input type="checkbox"/> Commodities <input type="checkbox"/> Other (specify):	<input type="checkbox"/> Communications <input type="checkbox"/> Consumer Protection <input type="checkbox"/> Copyright <input type="checkbox"/> Patent <input type="checkbox"/> Trademark <input type="checkbox"/> Election <input type="checkbox"/> Energy <input type="checkbox"/> Environmental	<input type="checkbox"/> Freedom of Information <input type="checkbox"/> Immigration <input type="checkbox"/> Labor <input type="checkbox"/> OSHA <input type="checkbox"/> Securities <input type="checkbox"/> Soc. Security <input type="checkbox"/> Tax	<b>2. Torts</b> <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Assault / Defamation <input type="checkbox"/> FELA <input type="checkbox"/> Product Liability/Warranty <input type="checkbox"/> Other (Specify):
<b>5. Other</b> <input type="checkbox"/> Forfeiture/Penalty <input type="checkbox"/> Real Property <input type="checkbox"/> Treaty (specify): _____ <input type="checkbox"/> Other (specify): _____	<b>6. General</b> <input type="checkbox"/> Arbitration <input type="checkbox"/> Attorney Disqualification <input type="checkbox"/> Class Action <input type="checkbox"/> Counsel Fees <input type="checkbox"/> Shareholder Derivative <input type="checkbox"/> Transfer	<b>3. Contracts</b> <input type="checkbox"/> Admiralty/ Maritime <input type="checkbox"/> Arbitration <input type="checkbox"/> Commercial <input type="checkbox"/> Employment <input type="checkbox"/> Insurance <input type="checkbox"/> Negotiable Instruments <input type="checkbox"/> Other (Specify):	
<b>4. Prisoner Petitions</b> <input type="checkbox"/> Civil Rights Habeas Corpus ___ 2254 ___ 2255 <input type="checkbox"/> Mandamus <input type="checkbox"/> Parole <input type="checkbox"/> Vacate Sentence <input type="checkbox"/> Other		<b>7. Will appeal raise constitutional issue?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  Will appeal raise a matter of first impression? <input type="checkbox"/> Yes <input type="checkbox"/> No	

  

Is any matter relative to this case pending below? ☐ Yes ☐ No (specify):

  

To your knowledge, is there any case now pending or about to be brought before this Court or any other court or administrative agency which  
 (A) arises from substantially the same case or controversy as this appeal? ☐ Yes ☐ No  
 (B) involves an issue that is substantially the same, similar, or related to an issue in this appeal? ☐ Yes ☐ No  
 If yes, state whether ☐ "A" or ☐ "B" or ☐ both, and provide:

  

Case Name:	Docket No.	Citation:	Court or Agency:
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Name of Appellant:

  

Date:	Signature of Counsel of Record
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### NOTICE TO COUNSEL

**Once you have filed your Notice of Appeal with the District Court or the Tax Court and have paid the \$5 filing fee, you have only ten (10) days in which to docket your appeal. You must take the following steps within those ten (10) days:**

1. Complete this Civil Appeal Pre-Argument Statement (Form C); serve it upon all parties, and file it with the Clerk of the Court of Appeals.
2. File the Court of Appeals Transcript Information/Civil Appeal Form (Form D) with the Clerk of the Court of Appeals.
3. Pay the \$100 docketing fee to the Clerk of the **United States District Court**, unless you are authorized to prosecute the appeal without payment.

**IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN TEN (10) DAYS, YOUR APPEAL WILL BE DISMISSED.**

(NOTE: This form is not required of non-attorney pro se litigants.)

SEE THE CIVIL APPEALS MANAGEMENT PLAN  
OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

#### NOTICE CONCERNING DISCLOSURE OF INTERESTED PARTIES

**Rule 0.15 of the local rules of this Court supplementing the Federal Rules of Appellate Procedure provides as follows:**

**0.15 Disclosure of Interested Parties.**

To enable the judges of the court to evaluate possible disqualification, counsel for all private (nongovernment) parties, in an appeal, or in a motion or other proceeding related to an appeal, shall in all cases submit when such party's initial brief is due, or upon request of the Clerk, an identification of any corporate parent of the party.

# United States Court of Appeals

FOR THE  
SECOND CIRCUIT

## **NOTICE TO COUNSEL**

The Civil Appeals Management Plan of the Court of Appeals for the Second Circuit directs appellant to file Form C-A with the Clerk of the Court within ten (10) days after filing the application for enforcement or petition for review.

FORM C-A



UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

☐ APPLICATION FOR ENFORCEMENT

☐ PETITION FOR REVIEW

PRE-ARGUMENT STATEMENT

SEE NOTICE ON REVERSE. PLEASE TYPE OR PRINT. ATTACH ADDITIONAL PAGES IF NECESSARY.

NAME OF AGENCY:

AGENCY DOCKET NO.:

TITLE IN FULL:

ORDER NUMBER:

APPROXIMATE NO. OF PAGES IN RECORD:

JURISDICTION OF COURT OF APPEALS:

DATE ENTERED:

NO. OF EXHIBITS:

USCA

HAS THIS MATTER BEEN BEFORE THIS COURT PREVIOUSLY? ☐ Yes ☐ No IF YES, STATE:

CASE NAME: CITATION: DOCKET NO.:

ATTORNEY(S) FOR PETITIONER(S):

NAME

ADDRESS

TELEPHONE

ATTORNEYS FOR RESPONDENT(S):

NAME

ADDRESS

TELEPHONE

APPEAL TAKEN: ☐ AS OF RIGHT ☐ BY DISCRETION (SPECIFY STATUTES UNDER WHICH APPEAL IS TAKEN): USCA

PETITIONER/APPLICANT IS ☐ AGENCY ☐ OTHER PARTY ☐ NON-PARTY. SPECIFY STANDING:

FACTS UPON WHICH VENUE IS BASED:

NATURE OF ORDER ON WHICH REVIEW OR ENFORCEMENT IS SOUGHT:

☐ ADMINISTRATIVE REGULATION/RULEMAKING

☐ BENEFITS REVIEW

☐ UNFAIR LABOR PRACTICE:

☐ ROUTES:

\_\_\_ COMMUNICATIONS

\_\_\_ COMMERCE

\_\_\_ OTHER: (SPECIFY)

\_\_\_ HEALTH & SAFETY

\_\_\_ IMMIGRATION

\_\_\_ TARIFFS

\_\_\_ EMPLOYER

\_\_\_ UNION

CONCISE DESCRIPTION OF PROCEEDINGS BELOW AND ORDER TO BE REVIEWED OR ENFORCED (NOTE THOSE PARTS OF THE ORDER FROM WHICH RELIEF IS SOUGHT):

ISSUES PROPOSED TO BE RAISED ON PETITION OR APPLICATION:

RELIEF SOUGHT:

TO YOUR KNOWLEDGE, IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT OR ANY OTHER COURT OR ADMINISTRATIVE AGENCY WHICH:

(A) ARISES FROM SUBSTANTIALLY THE SAME CASE OR CONTROVERSY AS THIS APPEAL? ☐ YES ☐ NO

(B) INVOLVES AN ISSUE SUBSTANTIALLY THE SAME, SIMILAR, OR RELATED TO AN ISSUE IN THIS APPEAL? ☐ YES ☐ NO

(IF YES, STATE WHETHER "A" OR "B" OR BOTH AND PROVIDE:

DOCKET: CASE NAME:

COURT OR AGENCY: CITATION: NUMBER:

FOR PETITIONER OR APPLICANT:

(PRINT) NAME OF PETITIONER

NAME OF COUNSEL OF RECORD

TELEPHONE

DATE

SIGNATURE OF COUNSEL OF RECORD

FORM C-A

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**TRANSCRIPT INFORMATION - CIVIL APPEAL**

To be completed by counsel for appellant in civil appeal from district court within ten days after filing notice of appeal.

THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT		
<b>CASE TITLE</b>	<b>DISTRICT</b>	<b>DOCKET NUMBER</b>
	<b>JUDGE</b>	<b>APPELLANT</b>
	<b>COURT REPORTER</b>	<b>COUNSEL FOR APPELLANT</b>

**TRANSCRIPT ORDER - Must be completed**

<b>DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATES).</b>  <input type="checkbox"/> I am ordering a transcript.  <input type="checkbox"/> I am not ordering a transcript. <b>Reason:</b> <div style="margin-left: 20px;"> <input type="checkbox"/> Daily copy is available   <input type="checkbox"/> Other - Attach explanation         </div>	<div style="height: 100px;"></div> <div style="display: flex; justify-content: space-between; align-items: flex-end; padding-top: 10px;"> <b>METHOD OF PAYMENT</b> <div> <input type="checkbox"/> Funds           <input type="checkbox"/> CJA Voucher (CJA 21)         </div> </div>	
<input type="checkbox"/> PREPARE TRANSCRIPT OR PRE-TRIAL PROCEEDINGS.  <input type="checkbox"/> PREPARE TRANSCRIPT OF TRIAL  <input type="checkbox"/> PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS  <input type="checkbox"/> PREPARE (Other: Specify)	<b>DELIVER TRANSCRIPT TO: (NAME, ADDRESS, TELEPHONE)</b>  <div style="height: 100px;"></div>	
<p><b>I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by the Civil Appeals Management Plan, F.R.A.P. and the local rules.</b></p>		
<b>COUNSEL'S SIGNATURE</b>	<b>DATE</b>	
<b>COURT REPORTER ACKNOWLEDGMENT</b> To be completed by court reporter. Return one copy to Clerk , U.S. Court of Appeals		
<b>DATE ORDER RECEIVED</b>	<b>ESTIMATED COMPLETION DATE</b>	<b>ESTIMATED NUMBER OF PAGES</b>
<b>SIGNATURE OF COURT REPORTER</b>		<b>DATE</b>

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Each motion must be accompanied by a supporting affidavit with statement of issues. (Local Rule 27(a))  
Include brief statement of facts with page references to the moving papers.

Docket Number

MOTION INFORMATION FORM

Use short title

Motion for

MOTION BY: (Name, address and tel. no. of law firm  
and of attorney in charge of case)

OPPOSING COUNSEL: (Name, address and tel. no. of law firm  
and attorney in charge of case)

Has consent of opposing counsel:

A. been sought? G Yes G No  
B. been obtained? G Yes G No

Has service been effected? G Yes G No  
Is oral argument desired? G Yes G No  
(Substantive motions only)

Requested return date: \_\_\_\_\_  
(See Second Circuit Rule 27(b).)

Has argument date of appeal been set:  
A. by scheduling order? G Yes G No  
B. by firm date/argument notice? G Yes G No  
C. If yes, enter date: \_\_\_\_\_

Judge or agency whose order is being appealed:

EMERGENCY MOTIONS, MOTIONS FOR STAYS AND  
INJUNCTIONS PENDING APPEAL

Has request for relief been made below? G Yes G No  
(See F.R.A.P. Rule 8.)

Any previous request for similar relief  
made to the 2<sup>nd</sup> Circuit? G Yes G No

Would expedited appeal eliminate need  
for this motion? G Yes G No  
If no, explain why not:

Will the parties agree to maintain the status quo  
until the motion is heard? G Yes G No

Brief statement of the relief requested:

By: (Signature of Attorney)  
Signed name must be printed beneath.

Appearing for: (Name of Party)

Appellant or Petitioner: G Plaintiff G Defendant  
Appellee or Respondent: G Plaintiff G Defendant

Date: \_\_\_\_\_

ORDER

Kindly leave this space blank.

BEFORE:

IT IS HEREBY ORDERED that the motion be and it hereby is granted denied.

For the Court:

By:

Date

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE 2ND CIRCUIT  
supplementing  
Federal Rules of Appellate Procedure

**INSTRUCTIONS**

- (a) Form of Notice of Motion and Supporting Papers for Motions and Opposition Statements
- (1) The moving party should submit the Motion Information Form in the format approved by the Court with such changes as the Chief Judge may from time to time direct.
- (2) Supporting Papers for Motions and Opposition Statements:
- (a) All motions must be accompanied by an affidavit containing factual information only.
- (b) Motions may not exceed 20 typewritten double-spaced 8-1/2 x 11 pages except by permission of the court.
- (c) Copy of lower court or agency decision must be included as a separately identified exhibit by a moving party seeking substantive relief.
- (d) Exhibits attached should be only those necessary for the determination of the motion.
- (3) Number of copies: **FOUR** copies shall be filed with the original.
- (4) Non-compliance Sanctions: If the moving party has not complied with this rule, the motion may be dismissed by the Clerk without prejudice to renew upon proper papers. If application is promptly made, the action of the Clerk may be reviewed by a single Judge. If the responding party fails to comply with this rule, the court may refuse to hear that party at oral argument. The court may impose costs and an appropriate fine against either party for failure to comply with this rule.

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**MOTION INFORMATION FORM**

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**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

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**DOCKET NO.**

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Attorney(s) for Petitioner  
Office & Post Office Address & Telephone Number